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In the Supreme Court of the United States

OCTOBER TERM, 1984

TIFFANY FINE ARTS, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the "John Doe" rules of Section 7609(f) of the Internal Revenue Code of 1954 (26 U.S.C.) apply to summonses that are issued by the IRS to a named taxpayer in connection with an investigation of that taxpayer's liability, where the information sought also might facilitate the investigation of other, unnamed taxpayers.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A12) is reported at 718 F.2d 7. The district court did not issue a written opinion.

JURISDICTION

The judgment of the court of appeals (Pet. App. A1) was entered on September 13, 1983. A petition for rehearing was denied on October 28, 1983 (Pet. App. A13). The petition for a writ of certiorari was filed on December 19, 1983 and was granted on April 2, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

STATUTE INVOLVED

Section 7602(a)(2), 7604(a) and 7609(a), (f) and (h) of the Internal Revenue Code of 1954 (26 U.S.C.) are set forth in the statutory appendix, *infra*, 1a.

STATEMENT

1. Section 7602(a)(2) of the Code[1] authorizes the IRS to issue summonses ordering the production of "books, papers, records, or other data * * * as may be relevant or material" to a tax investigation. If the summoned party fails to comply voluntarily, the Service may petition the appropriate district court to enforce its summonses. I.R.C. §§ 7402(b), 7604. To obtain the court's assistance, the IRS must establish only that "the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the Commissioner's possession, and that the administrative steps required by the Code have been followed * * *." *United States* v. *Powell*, 379 U.S. 48, 57-58 (1964).

A different provision of the Code applies, however, when a summons designed to obtain information about unidentified taxpayers is issued to an individual who is not himself the subject of an investigation. Under Section 7609(f), the IRS may issue such a "John Doe summons"—defined in the Code as one "which does not identify the person with respect to whose liability the summons is issued"—only "after a court proceeding" in which the Service establishes three things: (1) that "the summons relates to the

[1] Unless otherwise noted, all statutory references are to the Internal Revenue Code of 1954 (26 U.S.C.), as amended (the Code or I.R.C.).

investigation of a particular person or ascertainable group or class of persons"; (2) that a reasonable basis exists "for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law"; and (3) that both the information sought and the identity of the person whose liability is at issue "is not readily available from other sources." § 7609(f)(1)-(3). The Service's presentation to the court is made ex parte, and the court's determination must be "made solely on the petition and supporting affidavits." § 7609(h)(2).[2]

2. In late 1981 the IRS undertook an investigation into the 1979-80 tax liability of petitioners, related corporations that promote tax shelter investments.[3] On September 30 of that year Revenue Agent Joel Lewis, who was conducting the investigation, obtained copies of petitioner Tiffany Fine Arts' 1979 consolidated tax return (J.A. 23a).[4] Not long afterwards, on October 6, 1981, Lewis issued four summonses to petitioners pursuant to Section 7602(a) of the Code. These requested all of petitioners' financial records and books of account for the periods ending October 31, 1979 and October 31, 1980, as well as a list of the names, addresses, and taxpayer identifi-

[2] Section 7609(h)(3) provides that, except in limited circumstances, summons enforcement actions and proceedings brought under Section 7609(f) "take[] precedence on the docket over all other cases."

[3] Petitioner Tiffany Fine Arts, Inc. is a holding company; the other petitioners are its subsidiaries (Pet. App. A2).

[4] Previously, in July 1980 Lewis had made an appointment with petitioners' accountant "to conduct an examination of [their] books and records" (J.A. 22a), but the appointment was cancelled by the accountant.

cation numbers of persons who had acquired "Pedi-Pulsor" distributorships from petitioners (J.A. 4a-7a).[5]

Petitioners refused to comply with the summonses, contending that the IRS could obtain information touching on their customers and franchisees only by invoking the John Doe provisions of I.R.C. § 7609(f). When petitioners suggested that they might provide redacted records, Lewis explained that "[w]ithout examining the underlying licensing agreements," he "would be unable to determine whether the [petitioners] ha[d] properly reported their gross receipts" (J.A. 24a). Upon petitioners' continued refusal to comply with the summonses, the government brought this enforcement action in the Southern District of New York pursuant to I.R.C. §§ 7402(b), 7604.

In support of its enforcement petition, the government introduced two affidavits executed by Lewis. He affirmed that he was "conducting an investiga-

[5] The "Pedi-Pulsor" is a medical device marketed by petitioners (Pet. App. A2). Some time before August 28, 1981, Lewis had asked petitioners for a list of the "Pedi-Pulsor" licensees, but the request was refused (*ibid.*).

One of the summonses issued on October 6 also requested production of a list of clients "who acquired lithographs from Tiffany Fine Arts, Inc." (J.A. 5a). While Tiffany Fine Arts does not in fact sell lithographs (Pet. App. A4), Lewis explained that he had received information that a company named "Tiffany" was marketing lithographs in Florida (J.A. 22a). Because Tiffany Fine Arts "showed no income whatsoever," if "the 'Tiffany[]' doing business in Florida[] and the Tiffany herein[] were one and the same," "I would be faced with an obvious failure to report income" (*ibid.*). Upon inquiry, petitioners' attorney refused to confirm or deny that Tiffany Fine Arts sold lithographs (*ibid.*). Lewis accordingly included a request for lithograph information "out of an abundance of caution" (*ibid.*).

tion, one purpose of which [was] to ascertain the correctness of [petitioners'] consolidated corporate income tax returns" (J.A. 21a). Lewis was concerned about questionable business deductions and a "possible underreporting of income" by petitioners (J.A. 22a), an underreporting that he suspected might be traceable to an omission from income of "certain recourse and non-recourse notes provided by [Pedi-Pulsor] licensees" (J.A. 23a-24a). To verify the accuracy of petitioners' returns, Lewis continued, he had to identify petitioners' customers, examine the licensing agreements signed by the customers, and "match the income reflected by those agreements to the income reported" by petitioners (J.A. 24a). Lewis acknowledged the possibility that the IRS, after examining the summoned information, might make "further inquiry * * * into whether [the licensees] ha[d] correctly reported their income tax liabilities" (*ibid.*). For their part, petitioners responded by asserting their belief that "[t]he Service's true motive herein is to ascertain and audit the tax returns of [petitioners'] clients" (J.A. 18a).[6]

[6] Petitioners based their assertion on Lewis's earlier request for the names of "Pedi-Pulsor" licensees (see note 5, *supra*), on the Service's rejection of petitioners' offer of redacted financial information, and on the government's request for information about lithograph sales (see note 5, *supra*). J.A. 17a-18a. While petitioners also declared that they had offered the IRS an opportunity to verify their records by providing the identities of randomly selected licensees (J.A. 17a)—an assertion that is repeated before this Court (Pet. Br. 6)—Lewis affirmed that such an offer was not made, and explained that it would in any event have been unsatisfactory (J.A. 24a). Petitioners at no time asserted that the requested information was irrelvant to the Service's inquiry into their tax liability.

The district court ordered the summonses enforced, concluding that the Service had made "a sufficient showing * * * that the government's interests or the Internal Revenue Service's interest is in an audit of the consolidated returns of these companies" (J.A. 37a). The court added that an evidentiary hearing need not be held to explore petitioners' "hypothesis" of improper IRS motivation in light of the "clear factual statement" made by the government about its purposes (*ibid.*). It thus rejected petitioners' argument (see J.A. 29a-33a) that the Service was required to comply with Section 7609(f).

The court of appeals unanimously affirmed. It held that the "John Doe" rules of Section 7609(f) have no application where, as here, the IRS issues a summons to a named taxpayer in aid of a bona fide investigation of that person's tax liability. The court deemed irrelevant the possibility that records thus summoned might prove useful in auditing other, unnamed taxpayers, citing the absence of any indication that Congress intended Section 7609(f) to apply in such situations (Pet. App. A10), and noting the "formidable line" of this Court's holdings "establish[ing] that the summons power of the IRS should be construed broadly" (*ibid.*, citing cases). The court of appeals also observed that petitioners' approach "could easily destroy the delicate balance struck by § 7609(f)" by shouldering the IRS "with significantly greater administrative burdens than Congress intended" (Pet. App. A11). In so ruling, the Second Circuit followed the reasoning of the Eighth and Eleventh Circuits in *United States* v. *Barter Systems, Inc.*, 694 F.2d 163 (8th Cir. 1982), and *United States* v. *Gottlieb*, 712 F.2d 1363 (11th Cir. 1983), and rejected as unpersuasive the contrary holding of the Sixth Circuit in *United States* v. *Thompson*, 701 F.2d 1175 (1983). Finally, the court of appeals held that the district court properly refused to conduct an evidentiary hearing before ordering the summonses enforced, explaining that "the affidavits by agent Lewis established an ongoing IRS investigation of Tiffany sufficient to support the summonses issued here without compliance with the John Doe provisions of § 7609(f)" (Pet. App. A12).

SUMMARY OF ARGUMENT

1. Section 7609(f), which establishes the procedure for issuance of John Doe summonses, by its terms applies only to a summons that does not "identify the person with respect to whose liability [it] is issued." The summonses here, however, were issued "[i]n the matter of the tax liability" of petitioners, in furtherance of what both courts below found to be a legitimate investigation of petitioners' tax liabilities. Since petitioners properly were identified as the persons "with respect to whose liability" the summonses were issued, Section 7609(f) is inapplicable on its face.

Any ambiguity in the language of the provision is resolved by looking to the "mode of construction [that] has consistently been applied by this Court in construing the breadth of the [IRS] summons authority" (*United States* v. *Euge*, 444 U.S. 707, 715 (1980)): the Court has directed that "restrictions upon IRS summons power should be avoided 'absent unambiguous directions from Congress'" (*Arthur Young & Co.*, No. 82-687 (Mar. 21, 1984), slip op. 10, quoting *United States* v. *Bisceglia*, 420 U.S. 141, 150 (1975)). Thus the Court has declined to read other Code provisions as limiting Section 7602, and has restricted the authority of the district courts to

restrain the Service from issuing summonses. The same approach should be followed here, because Section 7609(f) provides no "direction"—unambiguous or otherwise—that it applies when the summoned information may be relevant to taxpayers in addition to the named one "with respect to whose liability the summons is issued."

2. When considering the scope of Section 7609(f) Congress plainly had in mind summonses issued to third parties that were not themselves under investigation. Both committee reports and the only congressional testimony relating to Section 7609(f) cited as examples of John Doe summonses only cases involving disinterested third party recordkeepers; nowhere in the legislative history is there a statement about, or an illustration of, a John Doe summons being issued to a taxpayer who was himself under investigation.

As this background suggests, Section 7609(f) was enacted in response to possibilities of abuse that simply are not present in cases such as this one, where the summoned parties are themselves under investigation. Congress did not intend Section 7609(f) to create enforceable "privacy rights" or make it more difficult for the IRS to obtain relevant information. Instead, Congress was concerned that if the Service could issue summonses at will to disinterested parties that had no stake in the underlying investigation and no incentive to contest enforcement, there would be nothing to restrain the IRS from "engag[ing] in * * * possible 'fishing expedition[s].'" H.R. Rep. 94-658, 94th Cong., 1st Sess. 311 (1975). Because in a John Doe situation there are no identifiable taxpayers to contest enforcement, Congress in Section 7609(f) required the IRS to have "specific facts

concerning a specific situation to present to the court" before a summons issued (H.R. Rep. 94-658, *supra*, at 311). When the summoned party is itself under investigation, however, there is no need to use Section 7609(f) to prevent "fishing expeditions" of the sort feared by the drafters of the John Doe provisions. In these circumstances the self-interest of the summoned party—and its established right to resist enforcement—were relied on by Congress to prevent the Service from striking out arbitrarily or from seeking irrelevant materials. Indeed, the petitioners in this case unsuccessfully contended in the district court that the Service's investigation of them was a pretext.

3. Applying Section 7609(f) whenever a summons requests information bearing on unidentified third parties would significantly impede "the effective exercise of the Service's enforcement responsibilities" (*Euge*, 444 U.S. at 711). Because virtually every IRS summons is likely to reveal information about parties with whom the taxpayer has dealt, petitioners' approach would require the Service to bring, and the courts to entertain, a vast number of unnecessary John Doe proceedings. Further, if the Service were unable to satisfy the requirements of Section 7609(f) as to the third parties, applying the John Doe rules would render the summons unenforceable, and thereby frustrate successful completion of the Service's investigation of *identified* taxpayers.

The Sixth Circuit's attempt to limit its holding by making application of the John Doe rules turn on the intent of the agent issuing the summons—so that Section 7609(f) would be called into play only when an "intent to investigate unknown third parties" is

"a motivating factor in the issuance of the summons" (*Thompson*, 701 F.2d at 1180-1181)—creates a system that is both unmanageable and disruptive of the Service's enforcement authority. Attempting to divine the subjective intent of individual agents would unduly delay "enforcement proceedings while the parties clash over, and judges grapple with, the thought processes of each investigator." *United States* v. *LaSalle National Bank*, 437 U.S. 298, 316 (1978).

4. Even if it is assumed that the IRS in issuing the summonses was motivated by the dual purposes of investigating both petitioners and their licensees, that assumption would not bring Section 7609(f) into play. Nothing in that provision addresses the Service's authority to issue Section 7602 summonses to an identified taxpayer if those summonses are aimed at determining the taxpayer's liability. A summons issued under Section 7602 is enforceable so long as *one* of its purposes is authorized by the provision. *United States* v. *LaSalle National Bank*, *supra*. Failure to apply this "dual purpose" rule here would ignore the role of Section 7602 as the "centerpiece" of the congressional scheme granting the IRS "expansive information-gathering authority" (*Arthur Young & Co.*, slip op. 9).

ARGUMENT

THE JOHN DOE PROVISIONS OF SECTION 7609(f) ARE INAPPLICABLE TO IRS SUMMONSES THAT ARE ISSUED TO NAMED TAXPAYERS WHO ARE THEMSELVES UNDER INVESTIGATION

Both courts below found that the summonses in this case were properly issued and sought information relevant to a bona fide investigation of petitioners' tax liability.[7] Summonses of this type, those courts concluded, are enforceable under Section 7602 without reference to Section 7609(f). Petitioners, however, note that the summonses will prove useful not only in auditing them, but also in identifying their customers and licensees. In such circumstances, petitioners maintain, it is irrelevant that the summonses were issued to further an investigation of named taxpayers who currently are under audit; instead, petitioners insist that attention should be focused only on the likelihood that enforcement of the summonses will turn up information about unidentified parties. Whenever a summons seeks such information, they contend, it cannot be served until

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[7] A large portion of petitioners' brief is devoted to making the factual argument that the Service was not conducting a bona fide investigation of petitioners' tax liability, and that the summonses in question were issued solely to obtain information about petitioners' clients (Pet. Br. 5, 7, 8, 9, 11-14, 33, 37-38). In making these assertions petitioners rely on affidavits that were presented to and considered by the district court and the court of appeals. Those courts concluded, on the basis of all the evidence, that the summonses were issued in furtherance of a legitimate investigation into petitioners' tax liability. This Court should not entertain petitioners' attempt to relitigate the facts.

the Service has completed a Section 7609(f) proceeding.[8]

Petitioners' view has been adopted by the Sixth Circuit. But it has been flatly rejected by unanimous panels of the Eighth, Eleventh, and now the Second Circuits. These courts have reasoned that the language and legislative history of Section 7609(f), as well as the congressional policies served by the summons provisions of the Code, compel the conclusion that the John Doe rules do not apply when a summons is issued to a named taxpayer whose tax liability is under investigation—even if the requested material may reveal information about other, unnamed individuals. In reaching this conclusion these courts of appeals have correctly followed this Court's

[8] Perhaps because they devote so much attention to their factual arguments (see note 7, *supra*), petitioners never clearly describe the circumstances in which they would apply Section 7609(f). At one point, they suggest that a John Doe proceeding must be used *whenever* a summons will disclose information about unidentified parties. See Pet. Br. 30 (suggesting that the IRS should have attempted to complete its audit of petitioners using only materials that did not reveal the identities of petitioners' clients; if the Service then determined that the audit could not be concluded without the names of the clients, the Service at that point could "seek an order to produce such records in accordance with section 7609(f)"). Elsewhere, however, petitioners indicate that Section 7609(f) is called into play only when a summons is issued at least in part for the *purpose* of obtaining information about unidentified parties. See Pet. Br. 32-33 (implying that the John Doe rules would not apply had the Service sought the names of petitioners' clients solely for the purpose of auditing petitioners); Pet. Br. 15, 31 (suggesting that the John Doe rules must be applied because at least one of the Service's purposes was the investigation of petitioners' clients). Either way, however, petitioners' approach is misguided.

admonition that the IRS summons authority "should be upheld absent express statutory prohibition or substantial countervailing policies." *United States* v. *Euge*, 444 U.S. 707, 711 (1980). No such prohibition or policies can be found in the language or background of Section 7609(f).

A. Section 7609(f) Cannot Properly Be Read To Apply To Summonses That Are Issued To Named Taxpayers Who Are Under Investigation, Even Though The Requested Information Also Will Be Relevant To The Tax Liability Of Other Taxpayers

Section 7609(f) by its terms applies only if a summons "does not identify the person with respect to whose liability [it] is issued." That simply is not the case here. The summonses enforced by the district court explicitly were issued "[i]n the matter of the tax liability of Tiffany Fine Arts Inc. & Subsidiaries" (J.A. 4a-7a). Both courts below found that the summonses furthered a legitimate, ongoing investigation into petitioners' tax liability (J.A. 37a; Pet. App. A12).[9] Those courts also concluded—indeed, petitioners never have denied—that the requested information is relevant to the Service's audit

[9] Those courts did not resolve the factual question whether one of Lewis's motives in issuing the summonses was an interest in obtaining the names of petitioners' licensees. The district court found only that the "Service's interest is in an audit of the consolidated returns of" petitioners (J.A. 37a). The court of appeals declined to address the question because "even assuming that the summonses in this case were issued to [petitioners] partly for the purpose of investigating [petitioners'] customers, the existence of that purpose—regardless of how it is characterized—does not invalidate the summonses because the IRS is pursuing the civil tax liability of a named taxpayer, Tiffany" (Pet. App. A12).

of petitioners (see note 6, *supra*). Since petitioners were "identified" legitimately (see *United States* v. *Powell*, 379 U.S. 48, 57-58 (1964)) as the persons "with respect to whose liability" the summonses were issued, Section 7609(f) is inapplicable on its face. Correspondingly, the summonses are properly enforceable under Section 7602.

Even if some ambiguity in the language of Section 7609(f) is assumed,[10] the reading given the provision by the Second Circuit is compelled by looking to the "mode of construction [that] has consistently been applied by this Court in construing the breadth of the [IRS] summons authority" (*Euge*, 444 U.S. at 715): the Court has repeatedly held that "restrictions upon IRS summons power should be avoided 'absent unambiguous directions from Congress.'" *United States* v. *Arthur Young & Co.*, No. 82-687 (Mar. 21, 1984), slip op. 10, quoting *United States* v. *Bisceglia*, 420 U.S. 141, 150 (1975). The Court, accordingly, has upheld broad applications of the Service's summons authority (*e.g.*, *Euge*, 444 U.S. at 714-716; *Bisceglia*, 420 U.S. at 150) and rejected attempts to impose implicit limitations on that authority (*e.g.*, *Arthur Young & Co.*, slip op. 9-15; *Donaldson* v. *United States*, 400 U.S. 517 (1971)). And, specifically, in *United States* v. *Powell*, *supra*, the Court—like the Second Circuit in this case—declined to read another provision of the Code, which concededly was designed to "curb * * * the investigating powers of low-echelon

[10] The Sixth Circuit, for example, read the statute differently, concluding that if a summons issued to a taxpayer under investigation also would produce information about unidentified individuals, both the taxpayer and those individuals are "person[s] with respect to whose liability the summons is issued" (*Thompson*, 701 F.2d at 1179). Petitioners read Section 7609(f) similarly (Pet. Br. 15-16).

revenue agents" (379 U.S. at 55), as narrowing the Service's Section 7602(a) summons authority.[11] Although the Court acknowledged that the more restrictive reading was plausible, it "reject[ed] such an interpretation because it might seriously hamper the Commissioner in carrying out investigations he thinks warranted" (379 U.S. at 53-54). So here, Section 7609(f) should not be interpreted to impose any restriction on the Service's broad summons authority beyond the restriction explicitly and unambiguously stated in that provision.

In sum, the Court has interpreted IRS summons authority against the backdrop of "a congressional policy choice *in favor of disclosure* of all information relevant to a legitimate IRS inquiry" (*Arthur Young & Co.*, slip op. 10 (emphasis in original)). As a result, the Court consistently has explained that the plain and often spare language of the Code should not be read as restricting the Service's power to issue summonses "absent [an] express statutory prohibition" (*Euge*, 444 U.S. at 711). Yet here there is no such explicit limitation in the statute: nothing in Section 7609 suggests that it applies when the summoned information will be relevant to taxpayers in addition to the one "with respect to whose liability the summons is issued." See *Gottlieb*, 712 F.2d at 1368; *Barter Systems, Inc.*, 694 F.2d at 168.

[11] In *Powell*, the summoned party contended that Section 7605(b) of the Code, which provides that "[n]o taxpayer shall be subjected to unnecessary examination," prevented the IRS from requesting the taxpayer's papers under Section 7602 without first showing some ground for believing that the taxpayer had committed fraud (since the statute of limitations barred the IRS from assessing deficiencies for the years under examination except in cases of fraud) (379 U.S. at 49).

B. The Legislative History Of Section 7609(f) Indicates That The John Doe Rules Do Not Apply When The Summoned Taxpayer Is Under Investigation

1. Section 7609 establishes the procedures used in connection with so-called "third party" summonses. Its first portion provides that, when a summons is issued to a "third party recordkeeper" [12] requesting information about a *named* taxpayer, and the recordkeeper is not itself under investigation, the named taxpayer must be given notice of and an opportunity to contest the summons.[13] § 7609(a) and (b). This provision grew out of congressional concerns that a recordkeeper who was not himself under investigation would have an "interest * * * in protecting the privacy of the records in question [that is] frequently far less intense than that of the person to whom the records pertain." S. Rep. 94-938, 94th Cong., 2d Sess. 368-369 (1976). See *United States* v. *Pittsburgh Trade Exchange, Inc.*, 644 F.2d 302, 305 (3d Cir. 1981). Involvement of the affected taxpayer, it was believed, would prevent the Service from using summonses to seek irrelevant material, or from otherwise disregarding the requirements of *United States* v. *Powell*, *supra*. See S. Rep. 94-938, *supra*, at 370.

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[12] Not all "disinterested" summoned parties fall within this category. Section 7609(a)(3) defines the term "third-party recordkeeper" to mean a bank or similar financial institution, consumer reporting agency, person who extends credit through "credit cards or similar devices," broker, attorney, or accountant. In 1982 barter exchanges were added to the list by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 324 *et seq.*

[13] In *Donaldson* v. *United States*, 400 U.S. 517, 530 (1971), the Court had held that a taxpayer in such a situation did not have a right to intervene in a proceeding to quash the summons.

Section 7609(f), which was enacted at the same time as the third party notice provision, was designed to address an analogous issue raised by this Court's decision in *Bisceglia*. In that case the Court held that the IRS had authority to issue John Doe summonses, even when the Service's investigation had not focused "upon a particular return, a particular named person, or a particular potential tax liability" (420 U.S. at 149).[14] Congress subsequently determined to adopt a procedure to forestall the possibility that John Doe summonses might be issued indiscriminately. Because the taxpayer affected by a John Doe summons is by definition unknown, in the John Doe context Congress substituted for Section 7609(a)'s notice provision the requirement, enacted in Section 7609(f), that issuance of the summons be approved by a district court. See H.R. Rep. 94-658, 94th Cong., 1st Sess. 307 (1975); *United States* v. *Samuels, Kramer & Co.*, 712 F.2d 1342, 1346 (9th Cir. 1983); *Gottlieb*, 712 F.2d at 1366 n.8. The congressional expectation was that such proceedings would prevent John Doe summonses from being used without restraint (H.R. Rep. 94-658, *supra*, at 307). In effect, the court was to be substituted in the John Doe context for the restraining influence exercised by participation of the affected taxpayer in the Section 7609(a) and (b) context.

2. Accordingly, when considering the scope of Section 7609(f), Congress plainly had in mind only summonses issued to third parties who were *not* themselves under investigation. Both Committee reports

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[14] In *Bisceglia* the summons in question was issued to a bank to determine the identity of an individual who had deposited $20,000 in deteriorated $100 bills (420 U.S. at 143).

cited as examples of "John Doe" summonses affected by Section 7609(f) only the summons in *Bisceglia*—which was issued to a bank for the purpose of investigating one of its depositors (see 420 U.S. at 143)—and several other cases involving disinterested third party recordkeepers. H.R. Rep. 94-658, *supra*, at 310-311; S. Rep. 94-938, *supra*, at 372. Moreover, the only congressional testimony in favor of the John Doe provisions was submitted on behalf of the American Banker's Association, which was concerned with the disclosure of bank records. *Tax Reform (Administration and Public Witnesses): Hearings Before the House Comm. on Ways and Means*, 94th Cong., 1st Sess. 364, 375-379 (1975) (testimony and statement of William M. Horne, Jr., Chairman of the American Banker's Association Committee on Taxation). In contrast, nowhere in the legislative history of Section 7609(f) is there a statement about, or an illustration of, a "John Doe" summons being issued to a taxpayer who was himself under investigation.[15]

[15] Amici First Western Government Securities, Inc. and Samuels, Kramer & Co. are mistaken in their assertion (Amici Br. 12) that one of the examples of a John Doe summons provided in the House Report (H.R. Rep. 94-658, *supra*, at 312) was a summons issued to a taxpayer that was itself under investigation. The summons referred to in the example was issued "to obtain the names of corporate shareholders involved in a taxable reorganization which had been characterized by the corporation (in a letter to its shareholders) as a nontaxable transaction." *Id.* at 311. The only reported case to which that example could have referred involved summonses issued to bank officials to learn the names of shareholders for whom the bank held shares as custodian, nominee or trustee. Thus the summonses were issued not to the corporation but to third party bank officials for the sole purpose of determining the tax liabilities of unidentified shareholders. *United States* v. *Armour*, 376 F. Supp. 318 (D. Conn. 1974). Indeed, the transactions involved tax liabilities only of the shareholders, not of the corporation. *Chapman* v. *Commissioner*, 618 F.2d 856 (1st Cir. 1980); *Heverly* v. *Commissioner*, 621 F.2d 1227 (3d Cir. 1980).

See *Gottlieb*, 712 F.2d at 1367 (canvassing legislative history); *Barter Systems, Inc.*, 694 F.2d at 168-169 & n.13 (same). Indeed, prior to the enactment of Section 7609(f) it appears that all of the reported "John Doe" cases involved summonses that had been issued to third parties whose own tax status was not under investigation.[16]

3. As this background suggests, the "third party" rules in general, and Section 7609(f) in particular, were enacted in response to possibilities of abuse that simply are not present in cases such as this one, where the summoned parties are themselves under investigation. Congress was concerned that if the Service could issue summonses at will to disinterested parties that had no stake in the underlying investigation and no incentive to contest enforcement, there would be nothing to restrain the IRS from "engag[ing] in * * * possible 'fishing expedition[s].'" H.R. Rep. 94-658, *supra*, at 311; S. Rep. 94-938,

[16] These cases included *United States* v. *Carter*, 489 F.2d 413 (5th Cir. 1973); *United States* v. *Humble Oil & Refining Co.*, 488 F.2d 953 (5th Cir. 1974), vacated and remanded for reconsideration in light of *United States* v. *Bisceglia*, 420 U.S. 141 (1975), 421 U.S. 943 (1975), on remand, 518 F.2d 747 (5th Cir. 1975); *United States* v. *Berkowitz*, 488 F.2d 1235 (3d Cir. 1973); *United States* v. *Turner*, 480 F.2d 272 (7th Cir. 1973); *United States* v. *Theodore*, 479 F.2d 749 (4th Cir. 1973); *Schulze* v. *Rayunec*, 350 F.2d 666 (7th Cir.), cert. denied, 382 U.S. 919 (1965); *Tillotson* v. *Boughner*, 350 F.2d 663 (7th Cir. 1965); *United States* v. *Armour*, 376 F. Supp. 318 (D. Conn. 1974); *United States* v. *Conrad*, 36 A.F.T.R.2d (P-H) ¶ 75-5247 (W.D. Pa. 1975).

supra, at 373. It therefore enacted Section 7609(a) to grant identifiable taxpayers who are affected by a third party summons the right to contest enforcement under the traditional *Powell* criteria, so long as the summoned party is disinterested; significantly, as even petitioners seem to acknowledge (Pet. Br. 16 n.2), notice to other affected taxpayers need *not* be given when the summoned recordkeeper is itself "the person with respect to whose liability the summons is issued" (§ 7609(a)(4)(A)).[17] And to prevent "fishing expeditions" in the John Doe situation, where there are no identifiable taxpayers to keep the Service in bounds, Congress in Section 7609(f) required the IRS to "have specific facts concerning a specific situation to present to the court" before a summons issued. H.R. Rep. 94-658, *supra*, at 311; S. Rep. 94-938, *supra*, at 373.

In enacting Section 7609, then, Congress was not concerned with creating privacy rights against proper investigation into compliance with the tax laws.[18] Indeed, Congress made it quite plain that the

[17] This is true even when the summons requests materials that plainly will shed light on the activities of unnamed parties. See *Abraham* v. *United States*, No. 84-6101 (2d Cir. July 18, 1984), aff'g 582 F. Supp. 257 (S.D.N.Y. 1984) (parties citing Section 7609(a) were denied a right to notice and permission to intervene in an enforcement proceeding—even though the summons sought their stock trading records—because the tax liability of the party on whom the summons was served itself was under investigation).

[18] Petitioners repeatedly assert that the John Doe procedures were meant to protect the personal privacy interests of the parties to whom the requested records pertain (Pet. Br. 19-21, 22). But this plainly is not the case. Unidentified individuals with respect to whom records are sought under Section 7609(f) have no right or opportunity to participate in John Doe court

provision was not intended to create new substantive rights or make it more difficult for the IRS to obtain relevant evidence. See S. Rep. 94-938, *supra*, at 370. And Congress never expressed an intent to keep pertinent material bearing on the investigation of an identified taxpayer out of the Service's hands simply because that material also might shed light on another party's tax situation. Rather, Section 7609(f) was designed as a procedural restraint against generalized or random IRS "fishing expeditions" (see *Samuels, Kramer & Co.*, 712 F.2d at 1346, quoting *In re Tax Liabilities of John Does*, 688 F.2d 144, 149 (2d Cir. 1982)).

When the summoned party is itself under investigation there is no need to use Section 7609(f) to

proceedings, since such proceedings by statute must be conducted ex parte (Section 7609(h)(2)). Indeed, the Code grants such individuals no right to intervene even in the usual enforcement proceedings conducted under Section 7604. See *Donaldson*, 400 U.S. at 527-530. Cf. *Abraham* v. *United States*, No. 84-6101 (2d Cir. July 18, 1984). Here, for example, if petitioners' licensees or customers know about the summonses at issue—which seems highly likely—they have no right to contest the validity of those summonses, whether or not the John Doe rules are found to apply. Had Congress meant to create a personal privacy right, it surely would have drawn the right in such a way that it could be asserted by the individual whose privacy is at stake. It is plain, however, that Congress was not concerned with protecting "privacy" as such; as the Eleventh Circuit observed in *Gottlieb*, the records held by persons such as petitioners may be freely available to a variety of government agencies and may be freely given by petitioners to other private parties (712 F.2d at 1369). Instead, Congress's intent was the narrow, specific one of forestalling IRS "fishing expeditions," to be accomplished by requiring that the Service have reason to seek materials before requesting them.

forestall the Service from embarking on such "expeditions," even if the requested material will reveal information about other parties. In such circumstances the vigilance and self-interest of the summoned party—complemented by its right to resist enforcement (see *Powell*, 379 U.S. at 58; *Euge*, 444 U.S. at 719)—will prevent the Service from striking out arbitrarily or from seeking irrelevant materials.[19] The affected taxpayer will fully be able and motivated to contest the summons on any of the grounds set out in *Powell* and *Euge*. See *Gottlieb*, 712 F.2d at 1369-1370. Indeed, that is precisely what petitioners did in this case when they argued to the district court that the Service's investigation of them was a pretense; the same path, of course, was followed by the summoned parties in *Gottlieb* and *Barter Systems, Inc.* To obtain enforcement of these sum-

[19] Amici First Western Government Securities, Inc. and Samuels, Kramer & Co. insist that a summoned party cannot adequately defend the interests of absent taxpayers because such a party will not be able to assert those taxpayers' "personal defenses," such as the attorney-client or Fifth Amendment privileges (Amici Br. 14). But an ex parte John Doe proceeding also will not take such defenses into account; the individual whose records are requested has no right to participate in—and may not be aware of—the proceeding. Indeed, the Code establishes that notice and an opportunity to intervene need not be given even to named parties whose records are requested when the taxpayer who receives the summons itself is under investigation (§ 7609(a)(4)); since the John Doe rules were adopted for basically the same purpose and as an alternative to the notice provisions of Section 7609(a) (see H.R. Rep. 94-658, *supra*, at 307; *Samuels, Kramer & Co.*, 712 F.2d at 1346; *Pittsburgh Trade Exchange*, 644 F.2d at 305; *Gottlieb*, 712 F.2d at 1366 n.8), they similarly do not apply when the taxpayer who receives the summons is under investigation.

monses, the IRS had to establish that it was engaging in a legitimate tax investigation by showing that the information sought may be relevant to the summoned party's tax liability. The Service in fact made just such a showing in this case, in an adversary proceeding. That showing satisfied the interests that would otherwise be protected by the ex parte procedure of Section 7609(f).

Thus, the personal stake of the summoned taxpayer provides the type of institutional restraint on the IRS that is offered by the John Doe rules when the party receiving the summons has no interest in the investigation. This is true whether or not the summons was issued in part for the purpose of obtaining information about unidentified parties. Where, as here, the taxpayer under investigation can contest the legitimacy of the Service's investigation, the possibility of abuse addressed by Section 7609(f) does not exist; requiring the IRS to go through a John Doe court proceeding therefore would not advance any congressionally endorsed purpose and would needlessly burden the courts. Because Section 7609(f) does not confer any enforceable personal rights upon unnamed taxpayers, holding a John Doe hearing also would not serve any legitimate interests of petitioners' licensees. In short, where the summoned party has a sufficient reason to defend against the summons because its own liability is at stake, the interest Congress sought to protect has been fully satisfied.

C. Application Of The John Doe Rules To Cases In Which The Summoned Taxpayer Is Under Investigation Would Be Unmanageable And Would Seriously Impede Enforcement Of The Revenue Laws

We have shown that application of Section 7609(f) to cases such as this one would not comport with the statutory language or with Congress's intent in enacting the statute. It also would seriously detract from the "expansive information-gathering authority" that Congress has granted the IRS (*Arthur Young & Co.*, slip op. 9), thus significantly impeding "the effective exercise of the Service's enforcement responsibilities" (*Euge*, 444 U.S. at 711).

1. As the court below noted (Pet. App. A11), virtually every IRS summons is likely to reveal information about parties with whom the taxpayer has dealt, and thus to some degree to facilitate the identification and investigation of unnamed taxpayers—often in ways that the Service would not have anticipated, given the complexity of modern economic relationships. Adopting petitioners' suggestion that the John Doe rules apply whenever enforcement of the summons will reveal information about unnamed third parties therefore would mean that virtually anyone who receives a summons under Section 7602 could demand that the IRS satisfy the requirements of Section 7609(f). At the least, this would subject the Service to far greater administrative and enforcement burdens than Congress could possibly have intended, a consequence that "would unwarrantedly cast doubt upon and stultify the Service's every investigative move" (*Donaldson*, 400 U.S. at 531). At the same time, it would impose significant additional burdens on the district courts that would be forced to consider the Service's petitions, burdens that would be

compounded by the requirement that in most cases summons enforcement proceedings be moved to the top of the docket. § 7609(h)(3).

Moreover, applying the John Doe rules in cases such as this one could seriously undermine the ability of the IRS to conduct audits of many *identified* taxpayers. If the Service were unable to satisfy the requirements of Section 7609(f) as to unnamed taxpayers such as petitioners' licensees, under petitioners' scheme summonses such as the ones in this case would be unenforceable. Yet audits of taxpayers in petitioners' situation could not meaningfully be conducted without access to non-redacted versions of materials such as those requested from petitioners.[20]

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[20] Petitioners repeatedly assert that the Service does not need the materials requested by the summonses to conduct an audit of petitioners' tax liability (Pet. Br. 6, 27, 32-33). But it obviously is not the role of a taxpayer under audit to determine what materials may be relevant; Section 7602 commits that determination to the Service and the courts. Here, both courts below agreed with the Service's conclusion that the requested material would further the ongoing audit. That judgment plainly was correct. The summoned records—ledgers, journals, checks and bank statements, contracts, and invoices—are the normal records considered necessary for the audit of any taxpayer's return, and are the very records from which a list of the names of petitioners' clients most likely would be compiled. It would not be sufficient to accept redacted versions of those records that excluded the names of the clients, for without the names it would be virtually impossible to trace transactions from source documents to books of account (see J.A. 24a), or reconcile reported income with deposits and receivables. Moreover, contacts with some of the clients might well be necessary to verify that the transactions reported by petitioners actually occurred. An audit is not, as petitioners imply (Pet. Br. 31-33), merely a mathematical exercise to test the correctness of the computations made; it is an examination of the transactions that

See *Gottlieb*, 712 F.2d at 1368-1369; *Barter Systems, Inc.*, 694 F.2d at 169. The application of Section 7609(f) to cases such as this one therefore would be contrary to the Service's statutory mandate to "inquire after and concerning all persons * * * who may be liable to pay any internal revenue tax" (§ 7601), and improperly would "force the Service to choose either to forgo the use of congressionally authorized summonses or to abandon" the other investigations it seeks to undertake. *United States* v. *LaSalle National Bank*, 437 U.S. at 307. It also effectively would allow a summoned taxpayer to resist a summons on grounds not traditionally available (that is, the asserted "privacy" interests of unnamed taxpayers), contrary to Congress's explicit statement that Section 7609 was not intended to create any substantive rights. See S. Rep. 94-938, *supra*, at 370. See also pages 20-21, *supra*.

2. The Sixth Circuit—and possibly petitioners as well (see note 8, *supra*)—sought to limit the damage its ruling would wreak on the Service's enforcement powers by adding another element to its interpretation of Section 7609(f): *Thompson* makes application of the John Doe rules turn on the intent of the agent issuing the summons. Specifically, the Sixth Circuit held that Section 7609(f) is called into effect only when "a clear intent to investigate unknown third parties" is "a motivating factor in the issuance of the summons" (701 F.2d at 1180, 1181). This subjective approach, which has been rejected by both this Court and Congress in the summons context, is unworkable in practice and unsound in principle.

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are reflected in records and on a return to insure that the transactions have been correctly reported and characterized.

In *United States* v. *LaSalle National Bank*, *supra*, this Court sustained the validity of a "dual purpose" summons, ruling that a summons issued under Section 7602 is enforceable so long as the IRS in an institutional sense has not abandoned its purpose of civil tax determination, notwithstanding that the issuing agent's purpose is to investigate criminal conduct (437 U.S. at 318). In so ruling, the Court noted that attempts to tie the enforceability of a summons to the subjective intent of the issuing agent would be "undesirable and unrewarding," and would "frustrate the enforcement of the tax laws by restricting the use of the summons according to the motivation of a single agent without regard to the enforcement policy of the Service as an institution" (*id.* at 316). Accepting the relevance of such inquiries also would allow the summoned party to make allegations of impropriety in almost every case, thus "delay[ing] summons enforcement proceedings while the parties clash over, and judges grapple with, the thought processes of each investigator" (*ibid.*).[21]

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[21] This state of affairs would encourage summoned parties such as petitioners to delay an investigation by making insubstantial allegations of impropriety, with the hope that applicable statutes of limitations would run before the investigation could be completed. In this case, for example, the summonses requested information for the years 1979 and 1980. The three year statutes of limitations governing determinations of tax deficiencies for those years therefore expired on April 15, 1983 or April 15, 1984. As a result, absent fraud or substantial unreported income (Section 6501(c) and (e)(1)), there no longer exists any reason for the IRS to conduct audits of petitioners' clients for either of those years. The information requested by the summonses is, however, still necessary to complete the ongoing audit of petitioners, which have consented to extensions of the statutes of limitations as to their own tax liabilities.

After *LaSalle National Bank* was decided, Congress amended Section 7602 to permit the issuance of a summons to investigate both civil and criminal tax matters, so long as no "Justice Department referral is in effect." Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 333(a), 96 Stat. 622. Congress thus both endorsed and expanded upon this Court's upholding of "dual purpose" summonses in *LaSalle National Bank*, by rejecting inquiry into the Service's institutional motivation as well as the agent's subjective intent.

The Sixth Circuit's contrary approach in the present context ignores the realities of tax enforcement while doing little to limit the scope of its ruling. In some cases the audit of an identified taxpayer necessarily will involve the consideration of material relating to unidentified third parties.[22] And in many other instances where the liability of a taxpayer—such as the promoter of a tax shelter, for example—plainly warrants investigation, an investigating agent inevitably will realize that the clients or customers of that taxpayer may bear scrutiny as well.[23] Requiring

[22] An agent who is auditing a partnership or a small corporation that has elected to have its earnings taxed to its shareholders under Subchapter S of the Code, for example, must learn the identities of the partners or shareholders, since the earnings of the entity are reported on the personal returns of the partners or shareholders. See §§ 701, 702, 1363, 1366.

[23] Unaccountably, petitioners seem to suggest that, both in this case and as a general rule, the Service will wish to review the tax liability only of the customers or clients of a tax shelter (Pet. Br. 13). Obviously, however, the IRS will be at least as interested in reviewing the returns of the shelter and its promoters. Indeed, this is confirmed by the very authority cited by petitioners (*ibid.*, quoting [2 Audit] Internal Revenue Manual (CCH) § 42(17)2.3 (Dec. 9, 1980)).

a court to determine the extent to which such a belief "motivated" the agent to issue a summons would involve the drawing of delicate distinctions of little practical significance, and could well result in needless curtailment of the agent's ability to pursue an indisputably justified investigation of the identified taxpayer.

Petitioners nevertheless insist that without an intent test the IRS's summons power is "capable of easy abuse" (Pet. Br. 17), because the Service might use the audit of a recordkeeper as a pretext for obtaining information about third parties (Pet. Br. 21, 34-35). But this argument is entirely beside the point, because "specious" audits of recordkeepers (Pet. Br. 35) already may be contested under Section 7602 without reference to the John Doe rules. It has long been the law that a summons issued under Section 7602(a) is enforceable only if it seeks material that may be relevant to a legitimate IRS inquiry (see *Powell*, 379 U.S. at 57-58). Petitioners in fact argued in this case that the ordinary Section 7602(a) standards had not been met, and both courts below concluded that the Service's ongoing investigation of petitioners' own tax liability was legitimate and not a pretense.[24] It is thus neither necessary nor appropriate to distort the John Doe rules to prevent the abuse of Section 7602(a). See *Euge*, 444 U.S. at 719; *Bisceglia*, 420 U.S. at 146, 151.

[24] Petitioners' opportunity "to challenge the issuance of the summons[es] in an adversary proceeding in federal court" was "quite sufficient" to protect their interests (*Euge*, 444 U.S. at 719). It was well within the district court's discretion to conclude, after reviewing the submissions of the parties, that a further evidentiary hearing was unnecessary. See *United States* v. *Morgan Guaranty Trust Co.*, 572 F.2d 36, 42-43 n.9 (2d Cir.), cert. denied, 439 U.S. 822 (1978). Cf. *Donaldson*, 400 U.S. at 528-529.

D. So Long As One Of The Purposes Served By A Summons Is Authorized Under Section 7602(a), The Summons May Be Issued Under That Section

Even if it is assumed that the IRS in issuing the summonses was motivated by the dual purpose of investigating both petitioners and their licensees, that assumption would not bring Section 7609(f) into play. Nothing in that Section addresses the Service's indisputable authority to issue Section 7602(a) summonses to an identified taxpayer if those summonses are aimed at determining the taxpayer's liability. And while Section 7609(f) imposes a procedural limitation on the Section 7602(a) authority to obtain information about unnamed taxpayers, a formidable line of cases holds that "Section 7602 should not be read so narrowly so as to imply that an audit for a purpose authorized by it must be restricted solely to that purpose and may not be utilized as a good faith effort to obtain ancillary data. To do so would be to deny the intent of section 7601, i.e., to insure the general workability of the federal taxation system." *United States* v. *First National Bank*, 635 F.2d 391, 396 (5th Cir.), cert. denied, 452 U.S. 916 (1981). Indeed, it would run squarely counter to the role of Section 7602 as the "centerpiece" of a congressional scheme granting the IRS "expansive information-gathering authority" (*Arthur Young & Co.*, slip op. 9), to focus on the situation of the unnamed parties rather than on that of the taxpayer under investigation.

Accordingly, in *United States* v. *LaSalle National Bank*, *supra*, in sustaining the validity of a "dual purpose" summons, this Court explained that although the purpose being validly served by the summons issued under Section 7602 (obtaining information to advance a civil investigation) and the purpose being challenged as inappropriate under that provision (obtaining information to advance the investigation of criminal activity) were "necessarily" intertwined, a dual purpose summons must be found enforceable so long as the Service continues to pursue "the congressionally authorized purposes of § 7602" (437 U.S. at 318). In a variety of contexts, the courts of appeals have followed *LaSalle National Bank* by reading Section 7602 to permit the issuance of dual purpose summonses, so long as one of the purposes is authorized by the provision. *First National Bank*, 635 F.2d at 395-396 (enforcing summons issued to named taxpayer where IRS had purpose of developing data for Taxpayer Compliance Measurement Program); *United States* v. *Flagg*, 634 F.2d 1087, 1091-1092 (8th Cir. 1980) (same); *Pittsburgh Trade Exchange*, 644 F.2d at 307-308 (enforcing summons issued in part for purpose of obtaining research data). Indeed, no matter what other IRS purposes may be served by the summons, "the very language of § 7602 reflects * * * a congressional policy choice *in favor of disclosure* of all information relevant to a legitimate IRS inquiry" (*Arthur Young & Co.*, slip op. 10 (emphasis in original)).

It has never been the law that the Service may not use information legitimately secured by it in the course of investigating one taxpayer's liabilities to initiate or pursue an investigation of the liabilities of other taxpayers.[25] Much less should it be the law that the Service's investigation of the first taxpayer's liability should be frustrated or impeded because of the mere possibility—or even the likelihood—that the in-

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[25] Indeed, a joint investigation of the liabilities of a group of taxpayers, such as petitioners themselves, is commonplace.

formation sought will also shed light on the tax liabilities of other persons.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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STATUTORY APPENDIX

Internal Revenue Code 1954 (26 U.S.C.):

§ 7602 [as amended by Section 333(a), Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 324]. Examination of books and witnesses

(a) *Authority to Summons, Etc.* For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

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§ 7604 [as amended by Section 1906(b)(13)(A), Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520] Enforcement of summons

(a) *Jurisdiction of district court* If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

• • • • •

§ 7609 [as added by Section 1205(a), Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520]. Special procedures for third-party summonses

(a) *Notice*—

(1) *In general* If—

(A) any summons described in subsection (c) is served on any person who is a third-party recordkeeper, and

(B) the summons requires the production of any portion of records made or kept of the business transactions or affairs of any person (other than the person summoned) who is identified in

the description of the records contained in the summons,

then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 23rd day before the day fixed in the summons as the day upon which such records are to be examined. Such notice shall be accompanied by a copy of the summons which has been served and shall contain an explanation of the right under subsection b(2) to bring a proceeding to quash the summons.

• • • • •

(b) *Right to intervene; right to proceeding to quash*

(1) *Intervention*

Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to intervene in any proceeding with respect to the enforcement of such summons under section 7604.

• • • • •

(f) *Additional requirement in the case of a John Doe summons*

Any summons described in subsection (c) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that—

(1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

(2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

(3) the information sought to be obtained from the examination of the records (and the identity of the person or persons with respect to whose liability the summons is issued) is not available from other sources.

• • • • •

(h) *Jurisdiction of district court; etc.*

(1) *Jurisdiction*

The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding brought under subsection (b)(2), (f), or (g). An order denying the petition shall be deemed a final order which may be appealed.

(2) *Special rule for proceedings under subsections (f) and (g)*

The determinations required to be made under subsections (f) and (g) shall be made ex parte and shall be made solely on the petition and supporting affidavits.

(3) *Priority*

Except as to cases the court considers of greater importance, a proceeding brought

for the enforcement of any summons, or a proceeding under this section, and appeals, takes precedence on the docket over all other cases and shall be assigned for hearing at the earliest practicable date.

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